IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE ACTING CHIEF JUSTICE MR.K.S.RADHAKRISHNAN

WEDNESDAY, THE 21ST FEBRUARY 2007 / 2ND PHALGUNA 1928

Crl.Rev.Pet.No. 436 of 1998()

CRA.263/1995 of III ADDL.SESSIONS COURT, ERNAKULAM
CC.290/1990 of ADDL.CHIEF JUDICIAL MAGISTRATE (ECONOMIC OFFENCES),ERNAKULAM
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REVN. PETITIONER/APPELLANT/ACCUSED:

C.P.ABDULKALAM, S/O P.K.ABOO,
CHERIAMATHILAKATH PUTHIYAPURAYIL,
KALLISSERY, CHERUKUNNU,
KANNAPURAM, KANNUR DISTRICT.

BY ADV. SRI.K.BABU THOMAS
SRI.S.WILLIAMS

RESPONDENTS/RESPONDENTS/COMPLAINANTS:
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1. THE ASSISTANT COLLECTOR, AIR CUSTOMS, AIRPORT, TRIVANDRUM.

2. STATE OF KERALA, REPRESENTED BY THE PUBLIC PROSECUTOR, HGIH COURT OF KERALA, ERNAKULAM.

R2 BY PUBLIC PROSECUTOR MR.P.RAVINDRA BABU
ADV. SRI.K.V.SABU
SRI.FRANCIS JOSEPH KURISINKAL, ADDL.CGS
SRI. AJITH KRISHNAN, ADDL.CGSC

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 21/02/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.S.RADHAKRISHNAN, Ag.C.J.

Crl.R.P.No.436 of 1998

Dated, this the 21st day of February, 2007

ORDER

Accused is the revision petitioner. He was sentenced to undergo rigorous imprisonment for three years and to pay a fine of Rs.20,000/- and in default of payment of fine to undergo simple imprisonment for nine months under Section 135(1)(i) of the Customs Act, 1962. The conviction and sentence recorded by the Additional Chief Judicial Magistrate (Economic Offences) Ernakulam was confirmed in appeal by the III Additional Sessions Judge, Ernakulam, against which this criminal revision is preferred.

2. The prosecution case is that the accused arrived at Thiruvananthapuram Air Port from Sharjah on 5.5.1990 and he had a baggage with him. He gave declaration that he had possessed goods worth Rs.1750/-. But when his baggage was searched it was noticed that he had concealed primary gold in the form of granules in his suitcase. The primary gold was got assayed by P.W.5 goldsmith and licensed gold dealer and he

estimated the gold granules at 1165 grams and of 24 carat purity on the basis of touch-stone method. P.W.1, the departmental officer, decided to value the primary gold at Rs.3,72,800/- on the basis of the prevailing market rate. He also recorded the confession statement of the accused under Section 108 of the Customs Act. The Collector of Customs, Cochin passed Ext.P8 adjudication order and confiscated the contraband under Section 111(d) of the Customs Act and imposed penalty of Rs.10,000/- under Section 112(a) of the said Act. The prosecution case is that the accused committed offences punishable under Sections 132 and 135 of the Customs Act.

3. Learned counsel appearing for the petitioner though did not seriously challenge the finding rendered by the courts below pleaded that the jail sentence may be converted into fine. Reference was also made to an order of this Court in Crl.R.P.No.902 of 1998. Counsel also placed reliance on the decision of the apex Court in **Jeevraj B.Jain** v. **Central Excise & Customs Department** [(2000) 10 SCC 270]. Considering the fact that the Legislature has subsequently liberalised the import of gold and the quantity brought is less than the limit and in the absence of any previous conviction I am inclined to accede to the

request made by the petitioner. Accordingly while upholding the order of conviction the sentence is modified to fine of Rs.50,000/- (Rupees fifty thousand) to be deposited by the petitioner within a period of three months from today before the Additional Chief Judicial Magistrate (Economic Offences) Ernakulam. By order dated 22.6.1998 this Court suspended the sentence on the revision petitioner executing a bond for Rs.25,000/- with two solvent sureties each for the like amount to the satisfaction of the Addl. Chief Judicial Magistrate (Economic Offences), Ernakulam and also on payment of fine of Rs.20,000/-. Since the petitioner has already deposited an amount of Rs.20,000/-, he has to deposit only the balance of Rs.30,000/- within the time limit mentioned above. In case the petitioner fails to pay the fine as imposed by this Court he will have to undergo the sentence as imposed by the courts below.

Revision petition is accordingly disposed of.

K.S.RADHAKRISHNAN,
Ag.CHIEF JUSTICE.

vns